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Message Text

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PAGE 01 DUBLIN 01749 061704Z

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ACTION EUR-12

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"LONDON POUCH TO BELFAST"

E.O. 11652: N/A
TAGS: PBOR, EI, UK
SUBJECT: GOI INTRODUCES BILL ON "EXTRATERRITORIALITY"

SUMMARY
GOI PUBLISHED ITS "CRIMINAL LAW (JURISDICTION) BILL" DEC 5, AFTER FORMALLY INTRODUCING IT IN DAIL. MAIN FEATURE IS PROVISION FOR PROSECUTION IN REPUBLIC FOR TERRORIST-TYPE OFFENSES IN NI (EXTRA-TERRITORIALITY"). IN WORDS OF ONE NEWSPAPER, THIS IS "AN ELAB-ORATE SUBSTITUTE FOR EXTRADITION" OF IRA FUGITIVES. END SUMMARY

1. IF PASSED, BILL WILL OBVIOUSLY BE A MAJOR DEPARTURE IN IRISH--AND INTERNATIONAL--PRACTICE. NEVERTHELESS, IT HAS NOT CAUSED ANY REMARKABLE REACTION HERE, BECAUSE IT HAS BEEN EXPECTED FOR ABOUT A YEAR. IT WAS PROMISED AT SUNNINGDALE CONFERENCE. PASSAGE THROUGH DAIL MAY BE DIFFICULT, SINCE OPPOSITION FIANNA FAIL PARTY SEEMS LIKELY TO OPPOSE BILL, AND A FEW GOI DEPUTIES ALSO HABE SERIOUS RESERVATIONS. THERE IS REMOTE POSSIBILITY OF GOVERNMENT DEFEAT ON ISSUE. ON BALANCE, HOWEVER, BILL IS EXPECTED TO PASS AFTER STREN-UOUS DEBATE.

2. BEFORE LAW CAN BE IMPLEMENTED, CORRESPONDING MEASURE MUST
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PAGE 02 DUBLIN 01749 061704Z

APPARENTLY BE PASSED AT WESTMINSTER, WHERE SIMILAR BILL HAS NOT

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YET BEEN INTRODUCED. (THIS PUTS IRISH IN UNUSUAL POSITION OF BEING ABLE TO ACCUSE THE BRITISH OF PROCRASTINATING ON SECURITY.) EVEN AFTER LAW IS IN EFFECT IT WILL PROBABLY NOT BE USED VERY OFTEN. MAJOR PURPOSE, CLEARLY, IS TO RESPOND TO ANCIENT BELFAST COMPLAINTS THAT REPUBLIC PROVIDES REFUGE FOR IRA FUGITIVES WHO HAVE COMMITTED MURDERS IN NI. GOI APPARENTLY CONTINUES TO BELIEVE THAT EXTRADITION IS POLITICALLY UNACCEPTABLE. WE HAVE NOT YET SEEN ANY REACTION FROM NI TO NEW BILL BUT WILL BE SURPRISED IF THERE IS ENTHUSIASTIC WELCOME UNTIL IRA FUGITIVES ARE ACTUALLY JAILED.

3. BILL APPLIES TO A NUMBER OF TERRORIST-TYPE OFFENSES ("SCHEDULED OFFENSES") IN NI. LIST APPEARS COMPLETE: MURDER, MANSLAUGHTER, ARSON, KIDNAPPING, CAUSING GRIEVOUS BODILY HARM, CAUSING EXPLOSION, HIJACKING, FIREARMS OFFENSES, AND ROBBERY, AMONG OTHERS.

4. IN ONE INTERESTING CASE, BILL WOULD APPLY TO OFFENSES ANYWHERE IN THE WORLD RATHER THAN SIMPLY IN NI.THIS EXCEPTION IS FOR CONSPIRACY TO CAUSE EXPLOSION AND RELATED OFFENSES. SECTION WAS PROBABLY TACKED ON AT LAST MOMENT AND IS CLEARLY A RESPONSE TO BIRMINGHAM BOMBS. RATHER THAN EXTEND EXTRATERRITORIALITY TO BRITAIN ALONG, GOI HAS OBVIOUSLY THOUGH IT WOULD DRAW LESS CRITICISM BY GOING WORLDWIDE. ONLY BRITAIN, HOWEVER, IS LIKELY TO PASS NEEDED RECIPROCAL LEGISLATION, SO PROVISION IS NOT LIKELY TO HAVE ANY EFFECT ELSEWHERE. EXCEPT FOR POLITICAL EXPEDIENCY, WE CAN THINK OF NO LOGICAL REASON FOR APPLYING THIS PROVISION ONLY TO OFFENSES INVLOVING EXPLOSIONS. MURDER, KINDAPPING, AND OTHER TERRORIST-TYPE OFFENSES WOULD APPEAR TO DEMAND EQUALLY STRONG MEASURES.

5. BILL SHOWS SIGNS OF HARD WORK OVER PASY YEAR. MUCH THOUGHT HAS BEEN GIVEN TO DIFFICULT TECHNICAL PROBLEMS. THERE IS, FOR EXAMPLE. PROVISION FOR ACCEPTING IN REPUBLIC EVIDENCE BASED ON EXAMINATION OF WITNESSES IN NI. NORHTERN LAWYERS WILL ALSO BE ALLOWED RIGHT TO APPEAR BEFORE COURTS HERE. IT IS DIFFICUALT TO FORESEE HOW ALL THIS WILL WORK OUT IN PRACTICE, BUT DRAFTERS HAVE TRIED TO MAKE BILL WORKABLE.

6. MANY PROVISIONS OF BILL ARE VERY TOUGH. THERE ARE HEAVY PENALTIES FOR RELATIVELY MINOR CRIMES AND WIDE POWERES OF SEARCH AND LIMITED OFFICIAL USE

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PAGE 03 DUBLIN 01749 061704Z

ARREST. PERSONS WHO ASSIST FUGITIVES WILL BE OPEN TO PROSECUTION FOR SAME CRIME AS FUGITIVE HIMSELF. WE ASSUME THAT THESE HARSH PROVISIONS ARE AIMED AT DEMONSTRATING SINCERITY TO NI CRITICS. ON OTHER HAND, THERE WILL BE SOME OBJECTIONS HERE ON CIVIL-RIGHTS GROUNDS.

7. PRESS REACTION SO FAR IS MODERATELY FAVORABLE, THOUGH THERE IS SOME CRITICISM OF INDIVIDUAL PROVISIONS. MOST PAPERS WANT

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STRONGER MEASURES AGAINST IRA AND GIVE THIS ONE BENEFIT OF THE DOUBT. THE MAIN FIANNA FAIL PAPER HAS NOT YET GIVEN AN OPINION. WHICH MAY INDICATE SOME ARGUMENTS WITHIN PARTY. "IRISH TIMES" GENERALLY APPROVES OF BILL BUT CALLS IT "AN ELABORATE SUBSTITUTE FOR EXTRADITION," WHICH SEEMS ACCURATE.

8. COMMENT: ABOVE PARAGRAPHS CONTAIN OUR COMMENTS ON INDIVIDUAL PROVISIONS OF BILL. IN GENERAL, IT APPEARS TO BE A LEGAL DEVICE OF GREAT COMPLEXITY, WITH SOME ANOMALIES. GOI SHOULD BE GIVEN CREDIT FOR TRYING HARD. EFFECTIVENESS IS ANOTHER QUESTION, AND ONE NOT YET ANSWERED. SOME CRITICS EVEN IN REPUBLIC WILL WISH THAT GOVT HAD GONE ALL THE WAY TO EXTRADITION.

9. THE ISSUE OF THE CONSTITUTIONALITY OF THE BILL HAS BEEN RAISED BY FIANNA FAIL AND CAN BE EXPECTED TO COME UP AGAIN. ONE METHOD WOULD BE UNDER ARTICLE 26 OF THE CONSTITUTION WHICH ALLOWS THE PRESIDENT TO REFER A BILL BEFORE SIGNATURE INTO LAW TO THE SUPREME COURT FOR DETERMINATION AS TO ITS CONSTITUT-IONALITY. MORE LIKELY, HOWEVER, IT WILL BE APPEALED IN AN EARLY TEST CASE UNDER THE NEW LAW.

10. WILL POUCH FULL TEXT OF BILL WHEN WE GET IT.
MOORE

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